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NOTE AND COMMENT

ESCHEAT—HOW STATE ACQUIRES TITLE.—Escheat is of feudal origin, and properly applied only to land which on failure of heirs or for certain other reasons, "fell in" to the lord under whom it had been held. Personal property without an owner, as *bona vacantia,* became the property of the crown. *In re Bond* [1901] 1 Ch. 15. In the United States escheat is used more broadly, but usually arises when the owner of property dies intestate without heirs. Our alienage laws have generally removed disabilities of aliens to take, but in some jurisdictions there may still be escheat because of alienage, see 5 MICH. L. REV.. 463. In others mortmain statutes provide for escheat of certain property held by corporations, *Louisville School Board* v. *King,* 127 Ky. 824, 15 L. R. A. N. S. 379, note, and in some states property like bank deposits, if long unclaimed, will vest in the state, *State* v. *First Nat. Bank of Portland,* 61 Oreg. 551, Ann. Cas. 1914 B 153, note; Mich. C. L. Secs. 321 ff., though in such cases the state is a kind of trustee for the absent owner, *Atty. Gen.* v. *Provident Inst. for Savings,* 201 Mass. 23; Mich. C. L. Sec. 338.

The state has such interest in a will of one dying without heirs that it is a proper party to a contest. *State* v. *Lancaster,* 119 Tenn. 638. Cf. *In re*

McClellan's Estate, 27 S. Dak. 109, Ann. Cas. 1913 C 1029, note, though of course there is no escheat if the last owner has by valid will fully disposed of his property. The right of the state to contest such a will does not depend upon statute, *State* v. *Lancaster, supra,* but is often expressly so given. Mich. C. L. Sec. 13839. Property by statute escheating to the county in which it is found is subject to an inheritance tax, *People* v. *Richardson,* 269 Ill. 275, commented on in 29 HARV. L. REV. 455, and some cases consider the state the ultimate heir, 29 HARV. L. REV. 455, but this cannot be sustained. See 21 HARV. L. REV. 452, *contra.* If the state were regarded as an heir title would not fail, and the better view is that the state takes because there is no heir. *Barnett's Trusts* [1902], 1 Ch. 847. Such was the view adopted in the recent case of *Delaney* v. *State,* 174 N. W. 290 (North Dakota, May, 1919). The owner of certain personal property died. An administrator was appointed, he administered, made final report, and was discharged. The probate court decreed that the "State of North Dakota is the only heir of said deceased, and as such is entitled to the whole of said estate." Action was brought against the State by plaintiffs who claimed to be heirs of the former owner. It was held that in such case the State does not take as heir, nor *ipso facto* on failure of heirs, but only by pursuing the remedy provided by statute to have property declared escheated.

The feudal conception of escheat, as a reverter of land to the lord or to the king, like so many feudal concepts, has persisted even in this country, where at least since the Revolution there have been no feudal tenures, 3 Washburn Real Property, Sec. 1866 (6th Ed.). According to the feudal view, in the United States the state takes the place of the lord or the crown, not as ultimate heir, but as donor or grantor of all land. Most land is indeed held by patent from the state, and many statutes, like the North Dakota statutes involved in the *Delaney case,* in substance provide that the original and ultimate right to all property, real and personal, is in the state, and when title fails for want of heirs it "reverts to the state." Political Code of North Dakota, 1905, Sections 6, 7; Code of 1913, Sections 8, 9; *Delaney* v. *State, supra.*

But these ideas are relics of a past that is gone, and it is believed to be more consistent with the social and property concepts of today to treat all private property not belonging to any particular individual as *bona vacantia* to be taken over by the state for the good of all. *Sands* v. *Lyndham, 27* Grat. 291, *In re McClellan's Estate, 27* S. Dak. 109, Ann. Cas. 1913 C 1029. That such property is to be taken for the community good is seen in many statutory provisions that such property shall go to some special public purpose, like the common school fund. Mich. C. L. Sections 324, 331; Shannon's Tenn. Code, Sec. 3825.

By the better view, such property does not *ipso facto* vest in the state. The state by inquest of office must first establish the fact of intestacy and failure of heirs, and it must do this in the way provided by statute. In the *Delaney case* the probate court, as part of the probate proceedings, found there were no heirs, and decreed distribution to the state. This was no

office found, and vested nothing in the state. Failure of ownership is a fact to be established. It is "most unusual, not to say unnatural, that there shall live a person who does not have some heir, living at the time of his death, capable of inheriting his property." There is, therefore, a very strong presumption against escheat, and the state has no purpose to take property unless all heirs fail. *State* v. *Williams,* 99 Miss. 293, Ann. Cas. 1913 E 381, note; 3 Washburn Real Property, Section 1869 (6th Ed.). This presumption is sometimes changed by statute, Mich. C. L. 329, but in suing to declare lands escheated the state must rely on the strength of its own title, and not on the weakness of the contestant's. *State* v. *Williams, supra.* Under a mortmain statute one in good faith buying of a corporation land which it might not own, and which the state on office found might have forfeited on a judgment declaring escheat, acquires a title indefeasible against the state and all others. *Louisville School Board* v. *King,* 127 Ky. 824. Indeed, it was held in that case that it would be unconstitutional for the legislature to vest title *ipso facto* in the state, and deny an adverse claimant a chance to resist escheat, and it is believed the same things would apply to the *Delaney case* in which plaintiffs sought to contest the finding that there were no heirs. After office found as provided by statute there seems no reason why the title of the state to property acquired by escheat should not be as secure as that of a distribute under ordinary probate proceedings. In neither case is the probate court the usual court of final resort to try out the rights of respective claimants. *Delaney* v. *State, supra; In re McClellan's Estate,* 27 S. Dak. 109, Ann. Cas. 1913 C 1029. After final proceedings in the probate court the escheat is in suspense pending inquest of office and decree of escheat as provided in the statute governing escheats. *Estate of Miner,* 143 Cal. 194.

E. C. G.

ACCIDENT INSURANCE—INTERPRETATION OF WORD "IMMEDIATELY."—One of the common clauses in accident insurance policies is one providing that the insured shall receive a specified sum of money per week for "loss of time" resulting from injuries due to "external, violent and accidental means" which shall "independently of all other causes, immediately, wholly and continuously disable the insured from transacting any and every kind of business pertaining to his occupation." A considerable amount of litigation has involved the interpretation of the various words and phrases in such a clause. On the interpretation of "total disability" see 4 HARV. L. REV. 176. Concerning the scope of "external, violent and accidental means" see 14 MICH. L. REV. 329. It is proposed to consider briefly in this note the word "immediately."

In two jurisdictions, the word "immediately," when used in clauses as indicated above, has been held to be a word of causation, and synonymous with the phrase "independently of all other causes;" or, at least (said the courts), the presence of the said phrase and the word "immediately" in the same clause, rendered the said word ambiguous, and therefore, since all ambiguities should be construed favorably to the insured, the plaintiff was entitled to recover. *Shera* v. *Ocean Accident Corporation,* 32 Ont. Rep. 411;